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**Introduced by Senator Knight**

February 13, 2014

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An act to amend Section 23663 of the Revenue and Taxation Code, relating to taxation.

## LEGISLATIVE COUNSEL'S DIGEST

SB 997, as introduced, Knight. Corporate taxes: credits: assignment. The Corporation Tax Law allows various credits against the taxes imposed by that law. That law allows, for each taxable year beginning on or after July 1, 2008, any credit that is an eligible credit, as defined, to be assigned to any eligible assignee, as defined.

This bill would make technical, nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 23663 of the Revenue and Taxation Code  
2     is amended to read:  
3     23663. (a) (1) Notwithstanding any other law to the contrary,  
4     for each taxable year beginning on or after July 1, 2008, any credit  
5     allowed to a taxpayer under this chapter that is an eligible credit  
6     may be assigned by that taxpayer to any eligible assignee.  
7     (2) A credit assigned under paragraph (1) may ~~only~~ be applied  
8     by the eligible assignee *only* against the ~~“tax”~~ (as *“tax,”* as defined  
9     in Section ~~23036~~ 23036, of the eligible assignee in a taxable year  
10    beginning on or after January 1, 2010.

(3) Except as specifically provided in this section, following an assignment of any eligible credit under this section, the eligible assignee shall be treated as if it originally earned the assigned credit.

(b) For purposes of this section, the following definitions shall apply:

(1) “Affiliated corporation” means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) “Eligible credit” shall mean:

(A) Any credit earned by the taxpayer in a taxable year beginning on or after July 1, 2008, or

(B) Any credit earned in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer’s first taxable year beginning on or after July 1, 2008, under the provisions of this part.

(3) “Eligible assignee” shall mean any affiliated corporation that is properly treated as a member of the same combined reporting group pursuant to Section 25101 or 25110 as the taxpayer assigning the eligible credit as of:

(A) In the case of credits earned in taxable years beginning before July 1, 2008:

(i) June 30, 2008, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(B) In the case of credits earned in taxable years beginning on or after July 1, 2008.

(i) The last day of the first taxable year in which the credit was allowed to the taxpayer, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(c) (1) The election to assign any credit under subdivision (a) shall be irrevocable once made, and shall be made by the taxpayer allowed that credit on its original return for the taxable year in which the assignment is made.

(2) The taxpayer assigning any credit under this section shall reduce the amount of its unused credit by the face amount of any credit assigned under this section, and the amount of the assigned credit shall not be available for application against the assigning taxpayer’s “tax” in any taxable year, nor shall it thereafter be

1 included in the amount of any credit carryover of the assigning  
2 taxpayer.

3 (3) The eligible assignee of any credit under this section may  
4 apply all or any portion of the assigned credits against the “tax”  
5 of the eligible assignee for the taxable year in which the assignment  
6 occurs, or any subsequent taxable year, subject to any carryover  
7 period limitations that apply to the assigned credit and also subject  
8 to the limitation in paragraph (2) of subdivision (a).

9 (4) ~~In no case may the~~ The eligible assignee *shall not* sell,  
10 otherwise transfer, or thereafter assign the assigned credit to any  
11 other taxpayer.

12 (d) (1) ~~No consideration~~ *Consideration shall not* be required  
13 to be paid by the eligible assignee to the assigning taxpayer for  
14 assignment of any credit under this section.

15 (2) In the event that any consideration is paid by the eligible  
16 assignee to the assigning taxpayer for the transfer of an eligible  
17 credit under this section, then:

18 (A) ~~No~~ A deduction shall *not* be allowed to the eligible assignee  
19 under this part with respect to any amounts so paid, and

20 (B) ~~No amounts~~ Any *amount* so received by the assigning  
21 taxpayer shall *not* be includable in gross income under this part.

22 (e) (1) The Franchise Tax Board shall specify the form and  
23 manner in which the election required under this section shall be  
24 made, as well as any necessary information that shall be required  
25 to be provided by the taxpayer assigning the credit to the eligible  
26 assignee.

27 (2) Any taxpayer who assigns any credit under this section shall  
28 report any information, in the form and manner specified by the  
29 Franchise Tax Board, necessary to substantiate any credit assigned  
30 under this section and verify the assignment and subsequent  
31 application of any assigned credit.

32 (3) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
33 Division 3 of Title 2 of the Government Code shall not apply to  
34 any standard, criterion, procedure, determination, rule, notice, or  
35 guideline established or issued by the Franchise Tax Board  
36 pursuant to paragraphs (1) and (2).

37 (4) The Franchise Tax Board may issue any ~~regulations~~  
38 *regulation* necessary to implement the purposes of this section,  
39 including any ~~regulations~~ *regulation* necessary to specify the  
40 treatment of any assignment that does not comply with the

1 requirements of this section (including, for example, ~~where if~~ the  
2 taxpayer and eligible assignee are not properly treated as members  
3 of the same combined reporting group on any of the dates specified  
4 in paragraph (3) of subdivision (b).

5 (f) (1) The taxpayer and the eligible assignee shall be jointly  
6 and severally liable for any tax, addition to tax, or penalty that  
7 results from the disallowance, in whole or in part, of any eligible  
8 credit assigned under this section.

9 (2) ~~Nothing in this~~ This section shall *not* limit the authority of  
10 the Franchise Tax Board to audit either the assigning taxpayer or  
11 the eligible assignee with respect to any eligible credit assigned  
12 under this section.

13 (g) On or before June 30, 2013, the Franchise Tax Board shall  
14 report to the Joint Legislative Budget Committee, the Legislative  
15 Analyst, and the relevant policy committees of both houses on the  
16 effects of this section. The report shall include, but need not be  
17 limited to, the following:

18 (1) An estimate of use of credits in the 2010 and 2011 taxable  
19 years by eligible taxpayers.

20 (2) An analysis of effect of this section on expanding business  
21 activity in the state related to these credits.

22 (3) An estimate of the resulting tax revenue loss to the state.

23 (4) The report shall cover all credits covered in this section, but  
24 focus on the credits related to research and development, economic  
25 incentive areas, and low-income housing.